IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1324 OF 2005

LKS Co.operative Housing Society
(Prop.) through its Chief Promoter/
Chairman ....Petitioner

v/s.

Shri Janardhan D. Vaity ....Respondent

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Mr.Mankapure i/b Mr.R.V.More for the Petitioner.

Mr.S.B.Shetye for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 21st September,2005

P.C.:

1. By this petition the Petitioner challenges the order dated 16-11-2004 passed by the trial court rejecting the application made by the Petitioner for amendment in the title of the plaint. The trial court has found that an application for amendment in the title of the suit was made after the parties have started leading evidence. Therefore, really speaking the application for amendment in the plaint could not have been entertained after the trial of the suit commenced. In the application for amendment, it was stated that really speaking the suit was to be filed in the name of LKS Tenants Welfare Association (Regd.), but by mistake and oversight the name of the

Plaintiff is mentioned as LKS Co.operative Housing Society (Prop.), thereby suggesting that LKS Co.operative Housing Society (Prop.) and LKS Tenants Welfare Association (regd.) is one and the same entity. Admittedly, Mr.Shaikh Abdul Kalam, is the witness examined on behalf of the Petitioner. Mr.Shaikh Kalam in his deposition states that,

> 32. I am residing in plaintiff society since the year 1989. I am Vice Chairman since 1 and 1/2 yrs. At the time of filing of suit I was the member of the society. Resolution was passed by the society before filing of the suit. I will produce the copy of the same. The Plaintiff society is the registered. I do not remember exact year of registration. I possessed the Registration Certificate. I have not brought it. I will produce it. I have not seen it. I am aware of the facts since establishment of society. It is not true that the Plaintiff society is not registered. It is not true that I have no right to file the suit.
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> 33. We are running L.K.S. Welfare Association. It is a registered one. We all are the members of the Association. It is not true that Association and society

have no connection with each others. Both are sister concerns. I have documentary evidence to that effect. I will produce it. Association and society are having different identity. Dr.M.L.Repheel is no more.

2. Thus, a clear statement of witness of the Plaintiff is that the Association and the Co.operative Housing Society are different and distinct entities. Thus the statement made in the application for amendment in relation to title of the plaint is in terms contrary to the statement made on oath by the witness examined on behalf of the Plaintiff, who states that he is Vice-Chairman of the Plaintiff-society. It is precisely for this reason that the trial court has rejected the application. The application for amendment in the title was made under Order 1 Rule 10. The trial court has found that there was no bonafide mistake committed in describing the Plaintiff when the plaint was filed. The trial court has rightly held that as the trial has commenced in view of Order 6 Rule 17 the application cannot be allowed unless the court is satisfied that inspite of due diligence the party could not have raised the matter before the commencement of the trial. The court has found that in the written statement the Defendant had pointed out that the suit by the proposed Co.operative

Society is not maintainable. Written statement was filed in the year 1997 and the application for amendment in the title was made in March, 2004. No explanation is given why the application was not made earlier.

3. Thus, looking from any point of view the filing of the application by the Petitioner itself was malafide and filing of the application really amounted to abusing the process of the court. Similarly, the Petitioner was not at all justified in filing this petition. The Petition is, therefore, rejected. The Petitioner is directed to pay as and by way of costs of this petition Rs.5,000/- to the Respondent.

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